



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 16, 1998

Mr. William L. Fly  
Attorney  
Southwest Texas State University  
601 University Drive  
San Marcos, Texas 78666-4615

OR98-2447

Dear Mr. Fly:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118607.

Southwest Texas State University (the "university") received a request for information pertaining to a position that was offered by the university. The requestor's first request, dated June 15, 1998, sought copies of the requestor's "personnel file." Correspondence from the university indicates that the requestor's own personnel file was provided to the requestor. The requestor's July 3, 1998 request letter seeks "complete files of ALL records, letters, memos, etc., concerning my employment (and my candidacy for the poetry position)" and asks specifically for certain letters and memos. The university responded, by letter dated July 9, 1998, informing the requestor that the candidacy records were not provided because they were not part of the previously provided personnel file and also that some specifically requested records do not exist. The university also asked the requestor to clarify his request by providing a list of documents sought. The requestor clarified his request, by letter dated July 10, 1998.

We assume that records responsive to the July 10, 1998 request are at issue. You submitted to this office various documents related to the position for which the requestor was a candidate, and you assert that these documents are protected from disclosure under section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

This office has stated that a governmental body must show that litigation is realistically anticipated in order to meet the first prong of the section 552.103(a) test. In Open Records No. 638 (1996), this office stated that whether litigation is reasonably anticipated must be determined on a case by case basis in light of the circumstances, including any changes in those circumstances. Based upon your arguments, the correspondence provided, and all information submitted, we conclude that the university has not established that litigation is reasonably anticipated. Thus, the records may not be withheld from disclosure under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RHS', followed by a stylized flourish.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 118607

Enclosures: Submitted documents

cc: Mr. Michael Blumenthal